



June 4, 1999

Mr. Lou Bright
General Counsel
Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR99-1560

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124678.

The Alcoholic Beverage Commission (the "ABC") received a request for "the final disposition of a case involving Speed's Billiards." You submitted to us information related to the case. You have released part of this information. You claim that the information you seek to withhold is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Although you have not raised section 552.101 of the Government Code as an applicable exception, we must consider whether the information is excepted from required public disclosure, pursuant to section 552.101. The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Please note that social security numbers in your records may be confidential under section 552.101 in conjunction with the federal Social Security Act.

Section 552.101 also protects, *inter alia*, information made confidential by judicial decision. You claim that information redacted from the documents released to the requestor and titled

Attachment C is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See Open Records Decision No. 208 (1978)*.

You advise that the information at issue reveals the identity of a minor used as an undercover informant. You have marked information in the requested records which identifies the minor. Having reviewed your arguments and the records at issue, we conclude that you may withhold the identity of the minor. You have also marked the identity of the undercover police officers who were witnesses to the violation. These police officers have a duty to report crime and are not protected by the informer's privilege. *See Roviaro*.

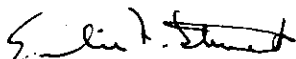
The names of undercover police officers may be excepted from disclosure under section 552.108 (b)(1) which protects internal records the release of which would interfere with law enforcement or prosecution. *See Open Records Decision No. 211 at 4 (1978)*. You do not claim that the information in Attachment C is protected from disclosure by section 552.108. The exception from disclosure under section 552.108 is discretionary and may be waived by the governmental body. *Open Records Decision No. 177 (1977)*. *See also Open Records Decision No. 586 (1991)*. While you failed to claim that the information redacted from Attachment C was excepted from disclosure under section 552.108, the Dallas County District Attorney asserts that release of any of the requested information would interfere with the prosecution of this case. The need of a governmental body, other than the body that has waived its claim that information is excepted from disclosure, may be a compelling reason for non-disclosure. *Open Records Decision No. 272 (1981)*. You may, therefore, withhold

the names of the undercover officers on Attachment C under section 552.108 on behalf of the Dallas County District Attorney.

You also assert that section 552.108 applies to the information contained in Attachment D. Section 552.108(a) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if (1) release of the information would interfere with the detection, investigation, or prosecution of crime” Based on the statement of the assistant district attorney for Dallas County that release of the requested information would interfere with the prosecution of the case, you may withhold the requested information in Attachment D. We note that you have already released basic information about the crime to the requestor as required by section 552.108(c).

Having ruled on all of the information at issue, we need not address your claim that section 552.103 protects the information at issue. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 124678

encl: Submitted documents

cc: Ms. Maryanna Manchee
Student Attorney
SMU Criminal Justice Clinic
P.O. Box 750116
Dallas, Texas 75275-0116
(w/o enclosures)